

ASSEMBLY BILL

No. 2373

Introduced by Assembly Member Norby

February 24, 2012

An act to add Section 22.5 to the Business and Professions Code, to add Section 22.5 to the Civil Code, to add Section 32.7 to the Code of Civil Procedure, to amend Section 3405 of the Commercial Code, to add Section 22 to the Corporations Code, to add Section 91 to the Education Code, to add Section 23 to the Financial Code, to add Section 34 to the Food and Agricultural Code, to add Section 27 to the Government Code, to add Section 26 to the Harbors and Navigation Code, to add Section 29 to the Health and Safety Code, to add Section 49 to the Insurance Code, to add Section 30 to, and to repeal Section 3353 of, the Labor Code, to amend Section 395.10 of the Military and Veterans Code, to add Section 7.2 to the Penal Code, to add Section 1102.5 to the Public Contract Code, to amend Section 6217.1 of the Public Resources Code, to add Section 20.2 to the Public Utilities Code, to add Section 23.5 to the Revenue and Taxation Code, to add Section 17.5 to the Unemployment Insurance Code, to add Section 364 to the Vehicle Code, to add Section 27 to the Water Code, and to add Section 28 to the Welfare and Institutions Code, relating to independent contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2373, as introduced, Norby. Independent contractor: definition.

Existing law defines “independent contractor” for purposes of the Labor Code to mean a person who renders service for a specified recompense for a specified result under the control of his or her principal

as to the result of his or her work only and not as to the means by which this result is accomplished.

This bill would amend that definition to state that whether a person is an independent contractor is determined by considering various factors, as specified. The bill would amend various other statutory codes to incorporate this definition of independent contractor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22.5 is added to the Business and
2 Professions Code, to read:

3 22.5. "Independent contractor," as used in this code, has the
4 same meaning as defined in Section 30 of the Labor Code.

5 SEC. 2. Section 22.5 is added to the Civil Code, to read:

6 22.5. "Independent contractor," as used in this code, has the
7 same meaning as defined in Section 30 of the Labor Code.

8 SEC. 3. Section 32.7 is added to the Code of Civil Procedure,
9 to read:

10 32.7. "Independent contractor," as used in this code, has the
11 same meaning as defined in Section 30 of the Labor Code.

12 SEC. 4. Section 3405 of the Commercial Code is amended to
13 read:

14 3405. (a) In this section:

15 (1) "Employee" includes an independent contractor, *as defined*
16 *in Section 30 of the Labor Code*, and employee of an independent
17 contractor retained by the employer.

18 (2) "Fraudulent indorsement" means (A) in the case of an
19 instrument payable to the employer, a forged indorsement
20 purporting to be that of the employer, or (B) in the case of an
21 instrument with respect to which the employer is the issuer, a
22 forged indorsement purporting to be that of the person identified
23 as payee.

24 (3) "Responsibility" with respect to instruments means authority
25 (A) to sign or indorse instruments on behalf of the employer, (B)
26 to process instruments received by the employer for bookkeeping
27 purposes, for deposit to an account, or for other disposition, (C)
28 to prepare or process instruments for issue in the name of the
29 employer, (D) to supply information determining the names or

1 addresses of payees of instruments to be issued in the name of the
2 employer, (E) to control the disposition of instruments to be issued
3 in the name of the employer, or (F) to act otherwise with respect
4 to instruments in a responsible capacity. "Responsibility" does not
5 include authority that merely allows an employee to have access
6 to instruments or blank or incomplete instrument forms that are
7 being stored or transported or are part of incoming or outgoing
8 mail, or similar access.

9 (b) For the purpose of determining the rights and liabilities of
10 a person who, in good faith, pays an instrument or takes it for value
11 or for collection, if an employer entrusted an employee with
12 responsibility with respect to the instrument and the employee or
13 a person acting in concert with the employee makes a fraudulent
14 indorsement of the instrument, the indorsement is effective as the
15 indorsement of the person to whom the instrument is payable if it
16 is made in the name of that person. If the person paying the
17 instrument or taking it for value or for collection fails to exercise
18 ordinary care in paying or taking the instrument and that failure
19 contributes to loss resulting from the fraud, the person bearing the
20 loss may recover from the person failing to exercise ordinary care
21 to the extent the failure to exercise ordinary care contributed to
22 the loss.

23 (c) Under subdivision (b), an indorsement is made in the name
24 of the person to whom an instrument is payable if (1) it is made
25 in a name substantially similar to the name of that person or (2)
26 the instrument, whether or not indorsed, is deposited in a depository
27 bank to an account in a name substantially similar to the name of
28 that person.

29 SEC. 5. Section 22 is added to the Corporations Code, to read:

30 22. "Independent contractor," as used in this code, has the same
31 meaning as defined in Section 30 of the Labor Code.

32 SEC. 6. Section 91 is added to the Education Code, to read:

33 91. "Independent contractor" whenever used in this code has
34 the same meaning as defined in Section 30 of the Labor Code.

35 SEC. 7. Section 23 is added to the Financial Code, to read:

36 23. "Independent contractor," as used in this code, has the same
37 meaning as defined in Section 30 of the Labor Code.

38 SEC. 8. Section 34 is added to the Food and Agricultural Code,
39 to read:

34. “Independent contractor,” as used in this code, has the same meaning as defined in Section 30 of the Labor Code.

SEC. 9. Section 27 is added to the Government Code, to read:

27. “Independent contractor,” as used in this code, has the same meaning as defined in Section 30 of the Labor Code.

SEC. 10. Section 26 is added to the Harbors and Navigation Code, to read:

26. “Independent contractor,” as used in this code, has the same meaning as defined in Section 30 of the Labor Code.

SEC. 11. Section 29 is added to the Health and Safety Code, to read:

29. “Independent contractor,” as used in this code, has the same meaning as defined in Section 30 of the Labor Code.

SEC. 12. Section 49 is added to the Insurance Code, to read:

49. “Independent contractor,” as used in this code, has the same meaning as defined in Section 30 of the Labor Code.

SEC. 13. Section 30 is added to the Labor Code, to read:

30. “Independent contractor” means a person who renders service for a specified recompense for a specified result, under the control of his or her principal as to the result of his or her work only and not as to the means by which such result is accomplished. Factors to be considered in determining whether a person is an independent contractor include the following:

(a) The extent to which the principal controls and directs the manner and means of rendering the service.

(b) The extent to which the principal provides training to the person rendering the service.

(c) Whether the service rendered is integrated into the principal’s business operations.

(d) The method by which the principal provides recompense.

(e) Whether a continuing relationship exists between the principal and person rendering the service.

(f) Whether the principal established the hours of work of the person rendering the service.

(g) The amount of time required for the person to rendered the service.

(h) Whether the principal or person rendering the service provides the instrumentalities and facilities necessary for rendering the service.

1 (i) The extent to which the person rendering the service is
2 required to report to the principal.

3 (j) The extent to which the person rendering the service has
4 unreimbursed business expenses or investments in the business of
5 the principal.

6 (k) Whether the person rendering the service is engaged in a
7 separate occupation or business or makes his or her service
8 available to the general public.

9 (l) Whether this kind of service is usually rendered under the
10 direction of the principal without supervision.

11 (m) Whether the parties believe they are establishing an
12 employer-employee relationship.

13 (n) The length of time for rendering the service.

14 (o) The extent to which the service pertains to the regular
15 business of the principal.

16 (p) The skill required to render the service.

17 (q) Whether the principal or person rendering the service have
18 a right to terminate their relationship.

19 SEC. 14. Section 3353 of the Labor Code is repealed.

20 ~~3353. "Independent contractor" means any person who renders~~
21 ~~service for a specified recompense for a specified result, under the~~
22 ~~control of his principal as to the result of his work only and not as~~
23 ~~to the means by which such result is accomplished.~~

24 SEC. 15. Section 395.10 of the Military and Veterans Code is
25 amended to read:

26 395.10. (a) Notwithstanding any other provision of law, a
27 qualified employer shall allow a qualified employee to take up to
28 10 days of unpaid leave during a qualified leave period.

29 (b) For purposes of this section:

30 (1) "Period of military conflict" means either of the following:

31 (A) A period of war declared by the United States Congress.

32 (B) A period of deployment for which a member of a reserve
33 component is ordered to active duty pursuant to either of the
34 following:

35 (i) Sections 12301 and 12302 of Title 10 of the United States
36 Code.

37 (ii) Title 32 of the United States Code.

38 (2) "Qualified employee" means a person who satisfies all of
39 the following:

40 (A) Is the spouse of a qualified member.

1 (B) Performs service for hire for an employer for an average of
2 20 or more hours per week, but does not include an independent
3 contractor, *as that term is defined in Section 30 of the Labor Code.*

4 (C) Provides the qualified employer with notice, within two
5 business days of receiving official notice that the qualified member
6 will be on leave from deployment, of his or her intention to take
7 the leave provided for in subdivision (a).

8 (D) Submits written documentation to the qualified employer
9 certifying that the qualified member will be on leave from
10 deployment during the time the leave provided for in subdivision
11 (a) is requested.

12 (3) “Qualified employer” includes any individual, corporation,
13 company, firm, state, city, county, city and county, municipal
14 corporation, district, public authority, or any other governmental
15 subdivision, that employs 25 or more employees.

16 (4) “Qualified member” means a person who is any of the
17 following:

18 (A) A member of the Armed Forces of the United States who
19 has been deployed during a period of military conflict to an area
20 designated as a combat theater or combat zone by the President of
21 the United States.

22 (B) A member of the National Guard who has been deployed
23 during a period of military conflict.

24 (C) A member of the Reserves who has been deployed during
25 a period of military conflict.

26 (5) “Qualified leave period” means the period during which the
27 qualified member is on leave from deployment during a period of
28 military conflict.

29 (c) A qualified employer shall not retaliate against a qualified
30 employee for requesting or taking the leave provided for in this
31 section.

32 (d) The leave provided for in this section shall not affect or
33 prevent a qualified employer from allowing a qualified employee
34 to take a leave that the qualified employee is otherwise entitled to
35 take.

36 (e) This section shall not affect a qualified employee’s rights
37 with respect to any other employee benefit provided for in other
38 laws.

39 SEC. 16. Section 7.2 is added to the Penal Code, to read:

1 7.2. “Independent contractor,” as used in this code, has the
2 same meaning as defined in Section 30 of the Labor Code.

3 SEC. 17. Section 1102.5 is added to the Public Contract Code,
4 to read:

5 1102.5. “Independent contractor,” as used in this code, has the
6 same meaning as defined in Section 30 of the Labor Code.

7 SEC. 18. Section 6217.1 of the Public Resources Code is
8 amended to read:

9 6217.1. (a) This section and the process described in this
10 section ~~governs~~ *govern* the expenditure of any funds received by
11 the State of California from the federal government for the purposes
12 of salmon and steelhead trout conservation and restoration, the
13 expenditure of funds authorized for the Coastal Watershed Salmon
14 Habitat Program pursuant to Article 7 (commencing with Section
15 79104.200) of Chapter 6 of Division 26 of the Water Code, and
16 the expenditure of funds appropriated to the Department of Fish
17 and Game for salmon and steelhead trout conservation and
18 restoration from the California Clean Water, Clean Air, Safe
19 Neighborhood Parks, and Coastal Protection Fund pursuant to
20 Article 5 (commencing with Section 5096.650) of Chapter 1.696
21 of Division 5 of the Public Resources Code.

22 (b) For purposes of this section, “project” means an activity that
23 improves fish habitat in coastal waters utilized by salmon and
24 anadromous trout species.

25 (c) (1) The Department of Fish and Game shall grant funds
26 from the Salmon and Steelhead Trout Restoration Account in the
27 Resources Trust Fund, as follows:

28 (A) At least 87.5 percent of the funds shall be allocated as
29 project grants through the existing grant program operated by the
30 fisheries management program of the Department of Fish and
31 Game.

32 (B) Not more than 12.5 percent of the funds may also be used
33 for project contract administration activities and biological support
34 staff.

35 (2) (A) A project shall require the consent of a willing
36 landowner, and emphasize the development of coordinated
37 watershed improvement activities.

38 (B) Projects that restore habitat for salmon and anadromous
39 trout species that are eligible for protection as listed or candidate

1 species under state or federal endangered species acts shall be
2 given top funding priority.

3 (C) Projects shall be cost-effective and treat causes and not
4 symptoms of fish habitat degradation. Projects may implement
5 instream, riparian, water quality, water quantity, and watershed
6 prescriptions and shall be designed to restore the structure and
7 function of fish habitat.

8 (3) Any grant funds allocated to a project that exceed the actual
9 cost of completing the project shall be returned to the Salmon and
10 Steelhead Trout Restoration Account.

11 (d) (1) A citizen's advisory committee shall be appointed by
12 the Director of Fish and Game to give advice on the grant program.

13 (2) The advisory committee shall consist of seven representatives
14 recommended by the California Advisory Committee on Salmon
15 and Steelhead Trout, one representative from the agriculture
16 industry, one representative from the timber industry, one
17 representative of public water agency interests, one academic or
18 research scientist with expertise in anadromous fisheries
19 restoration, and three county supervisors from coastal counties in
20 which anadromous trout exist. The county supervisor members
21 shall be recommended by the California State Association of
22 Counties.

23 (3) The advisory committee shall provide oversight of, and
24 recommend priorities for, grant funding under this section. In
25 making funding decisions, the Department of Fish and Game shall
26 consider the project selection priorities established by the advisory
27 committee.

28 (4) Members of any advisory committee established for these
29 purposes shall be reimbursed for travel and incidental expenses
30 related to the performance of their duties under this section.
31 Reimbursement for the advisory committee created pursuant to
32 this section shall be made from the funds designated in
33 subparagraph (B) of paragraph (1) of subdivision (c).
34 Reimbursement for other Department of Fish and Game salmon
35 and steelhead trout advisory committees shall be funded by
36 appropriate sources.

37 (5) If a member of the advisory committee, or a member of his
38 or her immediate family, is employed by a grant applicant, the
39 employer of a grant applicant, or a consultant or independent
40 contractor employed by a grant applicant, the advisory committee

1 member shall make that disclosure to the other members of the
2 committee, and shall not participate in reviewing or making
3 recommendations on the grant application of that applicant. *For*
4 *purposes of this paragraph, “independent contractor” has the*
5 *same meaning as defined in Section 30 of the Labor Code.*

6 (e) Except as provided in subdivision (f), the money in the
7 Salmon and Steelhead Trout Restoration Account shall be allocated
8 as follows:

9 (1) Not less than 65 percent of the money shall be used for
10 salmon habitat protection and restoration projects. Of that amount,
11 at least 75 percent shall be used for watershed (upslope) and
12 riparian area protection and restoration activities. These activities
13 may include, but are not limited to, grants to acquire and install
14 fish screens to protect juvenile and adult salmon and steelhead
15 trout from entrapment in water diversions, and grants to remove
16 substandard culverts, stream crossings, and bridges that constitute
17 barriers to spawning of salmon and steelhead trout and passage of
18 fish. These funds may also be used for the acquisition, from willing
19 sellers, of conservation easements for riparian buffer strips along
20 coastal rivers and streams to protect salmon and steelhead trout
21 habitat or for projects that protect and improve water quality and
22 quantity.

23 (2) Up to 35 percent of the money shall be allocated for any of
24 the uses listed in this paragraph.

25 (A) Watershed evaluation, assessment, and planning necessary
26 to develop a site-specific and clearly prioritized plan to implement
27 watershed improvements.

28 (B) Multiyear grants for watershed planning and project
29 monitoring and evaluations.

30 (C) Watershed organization support and assistance.

31 (D) Project maintenance and monitoring after the project
32 implementations are complete.

33 (E) Public school watershed and fishery conservation education
34 projects.

35 (F) Private sector technical training and education project grants,
36 including teaching private landowners about practical means of
37 improving land and water management practices that, if
38 implemented, will contribute to the protection and restoration of
39 salmon stream habitat; scholarship funding for workshops and
40 conferences that teach restoration techniques; operation of nonprofit

1 restoration technical schools; and production of restoration training
2 and education workshops and conferences.

3 (G) Fish and wildlife habitat improvements, as defined by
4 Section 4793, and authorized under the California Forestry
5 Incentive Program (CFIP).

6 (H) The salmon restoration project of the California
7 Conservation Corps.

8 (I) The state's share of the federal Watershed Stewards Program.

9 (J) Monitoring projects that utilize protocols approved by the
10 Department of Fish and Game and the National Marine Fisheries
11 Service (NMFS) to provide baseline or trend data, or both, for
12 anadromous fish populations or the physical and biological factors
13 known to be limiting recovery.

14 (K) Artificial propagation programs designed to restore depleted
15 stocks of salmonids that comply with the directives of the joint
16 Department of Fish and Game and NMFS Hatchery Operations
17 Review Committee.

18 (f) The advisory committee, in any fiscal year, may make a
19 recommendation to the Department of Fish and Game to allocate
20 money from the Salmon and Steelhead Trout Restoration Account
21 for the purposes stated in subdivision (e), but in different
22 percentage requirements than the 65/35 split stated in paragraphs
23 (1) and (2) of that subdivision. Following that recommendation,
24 the Director of Fish and Game may suspend the percentage
25 requirements stated in paragraphs (1) and (2) of subdivision (e)
26 for that fiscal year only.

27 SEC. 19. Section 20.2 is added to the Public Utilities Code, to
28 read:

29 20.2. "Independent contractor," as used in this code, has the
30 same meaning as defined in Section 30 of the Labor Code

31 SEC. 20. Section 23.5 is added to the Revenue and Taxation
32 Code, to read:

33 23.5. "Independent contractor," as used in this code, has the
34 same meaning as defined in Section 30 of the Labor Code.

35 SEC. 21. Section 17.5 is added to the Unemployment Insurance
36 Code, to read:

37 17.5. "Independent contractor," as used in this code, has the
38 same meaning as defined in Section 30 of the Labor Code.

39 SEC. 22. Section 364 is added to the Vehicle Code, to read:

1 364. “Independent contractor” has the same meaning as defined
2 in Section 30 of the Labor Code

3 SEC. 23. Section 27 is added to the Water Code, to read:

4 27. “Independent contractor,” as used in this code, has the same
5 meaning as defined in Section 30 of the Labor Code.

6 SEC. 24. Section 28 is added to the Welfare and Institutions
7 Code, to read:

8 28. “Independent contractor,” as used in this code, has the same
9 meaning as defined in Section 30 of the Labor Code.

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